

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

15-CR-142 (EAW)

vs.

EDGAR DEKAY, II,
Defendant.

Rochester, New York
May 9, 2019
8:15 a.m.

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SENTENCING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ELIZABETH A. WOLFORD
UNITED STATES DISTRICT JUDGE

JAMES P. KENNEDY JR., ESQ.
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P R O C E E D I N G S

(Open court, defendant present.)

THE CLERK: United States versus Edgar Dekay,
15-CR-142. We're here for a sentencing.

Counsel, please state your appearances for the
record.

MR. TRIPI: Joseph Tripi for the United States.

Good morning.

THE COURT: Good morning.

MR. HENRY: Daniel Henry on behalf of Mr. Dekay.

THE COURT: Good morning, Mr. Henry.

We have Officer Murray from probation.

And, for the record, you are Edgar Dekay?

THE DEFENDANT: Yes, sir.

THE COURT: You're represented here today by Mr.
Henry?

THE DEFENDANT: Yes, your Honor.

MR. HENRY: Your Honor, approximately maybe three
or four weeks ago, he had his jaw fractured in the facility
where he's at. So he's having a very difficult time
speaking. I just want to let the Court know.

THE COURT: Are you prepared to go forward with
sentencing?

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8:16AM 1 **THE COURT:** One of the things that will happen
2 during the sentencing, Mr. Dekay, is I'll ask you if there's
3 anything that you want to say. Are you going to be able to
4 speak?

8:16AM 5 **THE DEFENDANT:** Not really.

6 **MR. HENRY:** And he's basically expressed to me what
7 he would like me to say to you.

8 **THE COURT:** Do you want to go forward with the
9 sentencing, though, Mr. Dekay, because if you asked me to
8:16AM 10 adjourn this to a time where you were able to speak, I
11 certainly would be willing to do that.

12 **THE DEFENDANT:** I want to go forward with this.

13 **THE COURT:** You want to go forward with it?

14 **THE DEFENDANT:** Yeah.

8:16AM 15 **THE COURT:** Very good.

16 So, with that, Mr. Dekay, I'm going to identify on
17 the record what I have received. I have the revised
18 presentence report dated March 12th, 2019. I have the
19 government's statement with respect to sentencing factors
8:17AM 20 that was filed at docket 1405. I have the government's
21 notice of non-filing of motion filed at docket 1414. I have
22 the defendant's sealed sentencing memorandum filed at docket
23 1705.

24 And then Ms. Trott obviously was previously
8:17AM 25 representing Mr. Dekay and she submitted to the Court a

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8:17AM 1 number of letters that I was assuming, Mr. Henry, the defense
2 still wanted me to consider in connection with sentence?

3 **MR. HENRY:** Yes, your Honor.

4 **THE COURT:** So I'm going to identify those on the
8:17AM 5 record. A February 14, 2019, letter from Anthony Deloniak;
6 March 1, 2019, letter from Aubrey Dekay; March 1, 2019 letter
7 from Riley Dekay; September 18, 2018, letter from Megan
8 Dekay; September 29, 2017, letter from Marie Dekay;
9 September 11, 2018, letter from Marie Dekay; October 1, 2017

8:18AM 10 letter from Susan Segata, January 23, 2018, letter from Karen
11 Reilly; September 18, 2017, letter from Amy Dekay;
12 February 26th, 2018, letter from Jordan Cephalee, an undated
13 letter from Letocia Austin; an undated letter from Eugene
14 Misocchio; undated letter from Leon Tringalli; September 13,
8:18AM 15 2018, letter from Keith Elcissor; undated letter from Charles
16 Picard; March 7, 2018, letter from Greg Schuchman; August 1,
17 2018, letter from Andrew Geltzer; May 5, 2018, letter from
18 Anthony Sicspizar, and then also there were various
19 certificates regarding programs that Mr. Dekay participated
8:19AM 20 in during his incarceration that were submitted, as well.

21 So I guess I'll start with the government first.
22 Was there anything that I missed that was submitted in
23 connection with sentencing?

24 **MR. TRIPI:** No, Judge, I think you got everything.

8:19AM 25 **THE COURT:** Can you confirm for me, Mr. Tripi, that

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8:19AM 1 the government received the presentence investigation report?

2 **MR. TRIPI:** We did.

3 **THE COURT:** And does the government have any
4 objections to the report?

8:19AM 5 **MR. TRIPI:** We do not have any objections, although
6 I do note in Paragraph 40 there's a reference to a Flip in
7 terms of people he --

8 **THE COURT:** I saw that.

9 **MR. TRIPI:** In looking at it today, I'm not sure if
8:19AM 10 if that should have read Filly. It's nothing to object to.
11 I'm not sure if it was a typo or misspeak or whatever.

12 **THE COURT:** I saw that because that wasn't my
13 recollection.

14 **MR. TRIPI:** Correct.

8:19AM 15 **THE COURT:** That the defendant persuaded Greg
16 Willson to leave. I think it was the defendant left with Fil
17 Caruso.

18 **MR. TRIPI:** That was my understanding and that's
19 what I believe was intended by that statement in the
8:20AM 20 acceptance of responsibility section.

21 **THE COURT:** Okay. Thank you.

22 Mr. Henry, I guess, first of all, with respect to
23 that reference in Paragraph 40, was it supposed to be Filly?

24 **MR. TRIPI:** Fili is Filip Caruso and Flip is Greg
8:20AM 25 Willson.

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8:20AM 1 (WHEREUPON, a discussion was held off the record.)
2 MR. HENRY: It should be Fili.
3 THE COURT: I don't think it makes a difference for
4 purposes of sentencing.

8:20AM 5 MR. TRIPI: It doesn't. I just wanted to note
6 that.
7 THE COURT: Mr. Henry, was there anything that was
8 submitted in connection with sentencing that I missed?
9 MR. HENRY: Not that I'm aware of, your Honor. I
8:20AM 10 think you're accurate with everything.
11 THE COURT: Ms. Trott had previously right before
12 the last sentencing submitted some materials. I did not
13 consider those in connection with sentencing.
14 MR. HENRY: That's fine, that's correct, Judge.

8:21AM 15 THE COURT: And, Mr. Henry, can you confirm for me
16 that you received the presentence investigation report?
17 MR. HENRY: I did, your Honor.
18 THE COURT: Did you review it with Mr. Dekay?
19 MR. HENRY: Yes, I did.

8:21AM 20 THE COURT: Mr. Dekay, can you confirm for me that
21 you went over the presentence investigation report?
22 THE DEFENDANT: Yes, ma'am.
23 THE COURT: And, Mr. Henry, are there any
24 objections to the presentence investigation report?

8:21AM 25 MR. HENRY: None other than what we just talked

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8:21AM 1 about.

2 **THE COURT:** Fair enough. The defense is ready to
3 move forward?

4 **MR. HENRY:** We are.

8:21AM 5 **THE COURT:** Does the government move to sentence
6 the defendant?

7 **MR. TRIPI:** We do, your Honor.

8 **THE COURT:** Is there anything that you would like
9 to say, Mr. Tripi, before I sentence the defendant?

8:21AM 10 **MR. TRIPI:** No, your Honor. I'd rely on the record
11 before the Court. The presentence report, as the Court is
12 aware, Mr. Henry has asked for the low end of the Guideline
13 range. The government agreed in the plea agreement not to
14 take a position in terms of the specific sentence within the
8:21AM 15 Guideline range determined by the Court. Of course, we are
16 asking for a Guideline sentence but that's all I have to say.

17 **THE COURT:** Thank you, Mr. Tripi.

18 **MR. TRIPI:** Thank you.

19 **THE COURT:** Mr. Henry, anything that you would like
8:21AM 20 to say on behalf of your client before sentencing?

21 **MR. HENRY:** Yes, your Honor.

22 Judge, in reviewing this case and in talking with
23 Mr. Dekay, he's expressed to me, and I think it's reflected
24 in the presentence reported, that he's fully accepted his
8:22AM 25 responsibility in this case. He described how he became

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8:22AM 1 involved with the Kingsmen Motorcycle Club. It was at a time
2 when he lost his father. He was coming off of a bad divorce
3 and he was looking for something to fill that void.

4 He fully acknowledges that he involved himself with
8:22AM 5 some activities that has now placed him before this Court and
6 he's very sorry for what he's done. He's expressed his
7 remorse to me and for the pain and hurt that he may have
8 caused people because of his actions and his involvement
9 which has placed him before this Court.

8:22AM 10 He has no prior criminal convictions, Judge, other
11 than a driving while alcohol impaired violation from November
12 of 2005. He's married. He has three children, two with his
13 present wife and one from a previous relationship.

14 **THE COURT:** The PSR says that the daughter from a
8:23AM 15 previous relationship is 2 years old but Mr. Dekay has been
16 in custody since March of 2016.

17 **MR. HENRY:** I saw that, too, and I didn't
18 understand how that came about.

19 **THE COURT:** I'm assuming she's older than 2 or is
8:23AM 20 she 2?

21 **THE DEFENDANT:** She's older than 2, that's correct.

22 **MR. HENRY:** I saw that, and I started doing the
23 math, too, and it didn't make sense.

24 **THE COURT:** Okay.

8:23AM 25 **MR. HENRY:** But in regard to that, Judge, with the

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8:23AM 1 relationship, he does have the three children. They're all
2 very supportive of him. His wife, his mother's present in
3 the courtroom today. She's very supportive of him. He does
4 have the family support background. Mr. Dekay does have a
8:23AM 5 chemical dependency issue. While incarcerated at the Niagara
6 County Jail, Judge, he did participate in a four-month
7 treatment program through Northpoint Council and he'd very
8 much like to participate in the residential drug abuse
9 program offered through the Bureau of Prisons and I think
8:23AM 10 that would benefit him very much, if the Court would consider
11 that recommendation.

12 I have submitted my sentencing memorandum to the
13 Court. I know the Court has reviewed it, as indicated, and
14 has carefully considered everything that I've submitted in
8:24AM 15 determining what would be the appropriate sentence in this
16 case.

17 Your Honor, I'm respectfully asking the Court to
18 consider and ask for the low end of the sentencing Guideline
19 range.

8:24AM 20 I'm asking the Court to recommend to the Bureau of
21 Prisons to allow him to attend and participate in the
22 residential drug program, the RDAP program, and also I would
23 ask, Judge, that if the Court can recommend that he be placed
24 in either of the following facilities, either FCI Allenwood,
8:24AM 25 FCI Loretto or FCI McKean. Those are all most closest to his

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8:24AM 1 present western New York residence.

2 In regard to his medical situation with his jaw,

3 Judge, I would just kindly ask if you could make a

4 recommendation that he get the appropriate medical care while

8:24AM 5 at the Northeast facility. They did finally have him see a

6 oral surgeon but after that, nothing's been done and I would

7 just ask if you could make a note of that that whatever

8 facility he is placed in, if they can make a proper diagnosis

9 and administer the proper care needed.

8:25AM 10 Thank you, Judge.

11 **THE COURT:** Thank you, Mr. Henry.

12 Mr. Dekay, the law allows you to address me before

13 I sentence you. Is there anything you'd like to see?

14 **MR. HENRY:** Judge he's expressed to me again his

8:25AM 15 sincere remorse. He knows he's placed many people in

16 difficult situations, his family, the victims, or

17 complainants in this case. He's very sorry for what he did.

18 He wants to move on with his life. He has his family and he

19 feels he can be a productive individual in society once he

8:25AM 20 completes whatever sentence the Court imposes and he just

21 wants the Court to know how remorseful he is and that he does

22 fully accept his responsibility.

23 **THE COURT:** Okay, thank you, Mr. Henry.

24 I am prepared to sentence you, Mr. Dekay. In that

8:26AM 25 regard, as I've indicated, I've had an opportunity to review

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8:26AM 1 the presentence investigation report dated March 12, 2019, as
2 well as all the other submissions to which I previously
3 referred.

4 I've carefully reviewed all of those submissions.
8:26AM 5 I've listened carefully to all of the comments that have been
6 made here in Court today.

7 So, you stand before me, Mr. Dekay. You're 38
8 years old and you're being sentenced, after pleading guilty
9 to two separate counts in the second superseding indictment
8:26AM 10 in this case, Count 1 charged a RICO conspiracy in violation
11 of 18 U.S.C. Section 1962(d). The maximum sentence that can
12 be imposed for that crime is 20 years in prison; a \$250,000
13 fine; and up to 3 years of supervised release.

14 And then Count 40 charged possession of a firearm
8:26AM 15 in furtherance of a drug trafficking crime, in violation of
16 18 United States Code Section 924(c)(1)(A). There's a
17 mandatory minimum sentence of 5 years consecutive to any
18 other sentence that must be imposed for that crime. I
19 could impose up to life; up to a \$250,000 fine; and then up
8:27AM 20 to 5 years of supervised release.

21 Now, on December 14, 2016, you appeared before me
22 and you pled guilty and your plea was by way of a written
23 plea agreement pursuant to Rule 11(c)(1)(B) of the Federal
24 Rules of Criminal Procedure and what that meant was your plea
8:27AM 25 was entered into with the understanding and appreciation that

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8:27AM 1 it could not be taken back. The calculations and
2 recommendations set forth in the plea agreement were not
3 binding on me. I could impose up to the maximum allowed
4 under the law.

8:27AM 5 You and the government agreed that an appropriate
6 range under the Sentencing Guidelines was 123 months to 138
7 months in prison and that neither of you would argue for a
8 sentence outside that range.

9 As I explained at the time of your plea, sentencing
8:28AM 10 in this action is pursuant to the Sentencing Reform Act of
11 1984. In deciding on a reasonable and appropriate sentence,
12 I have a responsibility to impose a sentence that is
13 considered sufficient, but not greater than necessary, to
14 comply with the objectives of sentencing set forth at 18
8:28AM 15 United States Code, Section 3553(a).

16 Mr. Henry has indicated that he received a copy of
17 the presentence investigation report and reviewed it with
18 you. You've told me that you went over it with your
19 attorney. There have been no objections to the presentence
8:28AM 20 investigation report and, therefore, I'm going to adopt the
21 statements that are contained in that report as my findings
22 of fact.

23 Now the Sentencing Guidelines are no longer
24 mandatory but they're considered advisory and they're the
8:28AM 25 first step that I have to go through before I impose a

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8:28AM 1 sentence. And I do find that the calculations and
2 recommendations set forth in the presentence investigation
3 report are, in fact, correct. So, what that means is for the
4 predicate act involving running or managing a drug
8:29AM 5 establishment, attempt or conspiracy for the reasons set
6 forth in Paragraph 47 of the presentence investigation
7 report, there's a base offense level of 22 that applies to
8 that predicate act.
9 For the predicate act involving the aggravated
8:29AM 10 assault on a former Kingsmen member on September 21, 2012,
11 for the reasons set forth in Paragraph 53 of the presentence
12 investigation report, there is a base offense level of 21.
13 For the Springville shutdown, September -- June 7,
14 2013, for the reasons set forth in Paragraph 59, there's a
8:29AM 15 base offense level of 26.
16 For the August 3, 2013, aggravated assault of
17 victim, there's a base offense level of 21 for the reasons
18 set forth in Paragraph 65 of the presentence investigation
19 report. There's groupings that occur with respect to these
8:30AM 20 predicate acts as explained in further detail in Paragraph 71
21 of the presentence investigation report whereby the predicate
22 acts are -- or the grouped predicate acts are assigned units.
23 You take the greater of the adjusted offense levels, which is
24 the 26 from the Springville shutdown, you add 3 to that and
8:30AM 25 that results in a combined adjusted offense level of 29.

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8:30AM 1 This is, I should state, all with respect to Count 1, the
2 RICO conspiracy.

3 I do find that you've accepted responsibility for
4 your conduct, Mr. Dekay. So, therefore, pursuant to 3E1.1(a)
8:31AM 5 and 3E1.1(b), there's a 3 level reduction in that offense
6 level. That means your total offense level for Count 1 is a
7 26.

8 For Count 40, 2K2.4(b) of the Sentencing Guidelines
9 applies and that means that the Guideline term of
8:31AM 10 imprisonment is 5 years, to be served consecutive to all
11 other counts of conviction.

12 In addition to the offense levels, your Criminal
13 History Category based on the criminal convictions that are
14 set forth in Paragraph 83 of the presentence investigation
8:31AM 15 report, that just one point which means you have a Criminal
16 History Category of I.

17 So, for Count 1 with an offense level of 26,
18 Criminal History Category of I, the Sentencing Guidelines at
19 least would recommend a prison sentence of 63 to 78 months in
8:32AM 20 prison; 1 to 3 years supervised release.

21 For Count 40, the second count of conviction, the
22 Sentencing Guidelines would recommend 5 years consecutive to
23 Count 1; supervised release term of 2 to 5 years that's an
24 aggregate recommended punishment for Count 1 and Count 40
8:32AM 25 exactly what was calculated in the plea agreement, 123 months

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8:32AM 1 to 138 months in prison.

2 The recommended fine range is \$25,000 up to
3 \$250,000. In addition to the Sentencing Guidelines, I've
4 also considered all the other factors set forth in 18 U.S.C.
8:32AM 5 Section 3553(a) to determine a sentence that is sufficient,
6 but not greater than necessary, to comply with the objectives
7 of sentencing set forth in that statute.

8 I've considered the nature and circumstances of
9 your crime; your history and characteristics; your background
8:33AM 10 as fully set forth in the presentence investigation report.
11 It's set forth in the materials submitted to me. Your father
12 was an alcoholic and his death in September of 2005, I think
13 clearly impacted your family.

14 You're married with twin daughters, and I accept
8:33AM 15 the notion, Mr. Dekay, that you joined the Kingsmen looking
16 to belong -- looking for some kind of a family environment.
17 You're not unusual in that regard. Many of the defendants
18 who have either been sentenced by me or even those who
19 testified at trial that weren't necessarily charged seems to
8:33AM 20 be what drove many of these individuals to join this
21 motorcycle club which would all be fine and good if the club
22 hadn't engaged in violent activity.

23 And you were an integral part of that violent
24 activity. You were the president of the Nomads for a period
8:34AM 25 of time. You were president of the North Tonowanda Chapter

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8:34AM 1 for a period of time. You were involved in this driveby
2 shooting to retaliate back in September 21, 2012. Although
3 you were not present for the Springville shutdown, you were
4 involved in that incident and are held accountable for that
8:34AM 5 incident in June of 2013.

6 You were involved in the driveby shooting in August
7 of 2013. There's drug dealing, possession of firearms. It
8 shouldn't be shocking to anybody, frankly, that the ultimate
9 of this violence ended up culminating in these execution
8:34AM 10 style murders of Paul Maue and DJ Szymanski.

11 I'm not suggesting that you had anything to do with
12 the planning of that but you were involved in an
13 organization. You were involved in violent activity where
14 these members were running around with no concern about the
8:35AM 15 law or lawful activity and thinking that you were untouchable
16 to some regard and that you could just engage in this kind of
17 drug dealing and illegal activity and violent activity and
18 either it wasn't going to catch up with you from the criminal
19 justice standpoint and that nobody was going to end up being
8:35AM 20 seriously injured as a result.

21 As we know, at least two individuals lost their
22 lives as a result of this. After you left the Kingsmen
23 Motorcycle Club, you joined another motorcycle club. I know
24 in your acceptance of responsibility part of the presentence
8:35AM 25 investigation report, you claim that the narcotic column city

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8:35AM 1 Nomads and the Outlaws are just peaceful organizations.

2 I have to tell you, having sat through a four-month

3 trial listening to the activities that these motorcycle clubs

4 engage in, not just the Kingsmen Motorcycle Club, but other

8:36AM 5 motorcycle clubs, I find that very difficult to believe. I

6 think that these organizations do perpetuate a culture of

7 violence and when these individuals act in large numbers and

8 act as groups, it gives you more, I think, bravado, so to

9 speak, to think that you can engage in this kind of activity

8:36AM 10 and not end up being held responsible for it.

11 And the reality is that these organizations are

12 very dangerous. They're organized crime. The Kingsmen

13 Motorcycle Club clearly was an organized criminal outfit and

14 they presented a large threat to its members, to other

8:37AM 15 motorcycle club members and to the community.

16 I reviewed the information in the presentence

17 investigation report about your substance abuse issues. I

18 agree with your attorney, as well, that you have collateral

19 consequences from this conviction, no question about it.

8:37AM 20 I've considered the need for the sentence imposed

21 to reflect the seriousness of the offense, promote respect

22 for the law, provide just punishment for the offense, afford

23 adequate deterrence to criminal conduct, protect the public

24 from any further crimes that you might commit; the need to

8:37AM 25 provide you with any needed educational or vocational

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8:37AM 1 training, medical care or other correctional treatment in the
2 most effective manner, as well as the kinds of sentences
3 available; the need to avoid unwarranted sentence disparities
4 among defendants with similar records who have been found
8:38AM 5 guilty of similar conduct.

6 Most of the defendants who have been sentenced in
7 this case have been sentenced to Guideline sentences. And
8 most of them have either been at the low end of the range or
9 in the mid-range. The reality is that for a number of
8:38AM 10 reasons, I think only three defendants who have been
11 sentenced to date have received sentences in excess of 10
12 years in prison. That would be Mr. Pirk, Mr. Jenkins and
13 Mr. Willson. I don't believe any of the other defendants
14 have been sentenced to more than 10 years in prison.

8:38AM 15 I don't know, Mr. Tripi, if you --

16 **MR. TRIPI:** I think that's correct, Judge.

17 **THE COURT:** And I do appreciate the fact,
18 Mr. Dekay, as I look at the Guideline calculations in this
19 case, it's a significant period even at the low end of the
8:38AM 20 range. I think a Guideline sentence is appropriate based on
21 your conduct and my consideration of all the 3553(a) factors.
22 But I also think a sentence at the low end of the range is
23 appropriate.

24 And, so, therefore I will impose the sentence that
8:39AM 25 your attorney urged which is the 123 months in prison. I

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8:39AM 1 find that that is sufficient but not greater than necessary
2 to comply with all the objectives of sentencing set forth in
3 the Sentencing Reform Act.

4 So, therefore, pursuant to the Sentencing Reform
8:39AM 5 Act of 1984, it is the judgment of the Court that you, Edgar
6 Dekay, II, are hereby committed to the Bureau of Prisons for
7 63 months on Count 1 and 60 months on Count 40, with Count 40
8 to run consecutively to Count 1 for a total punishment of 123
9 months in prison.

8:39AM 10 The cost of the incarceration fee is waived.

11 Upon release from prison, you're going to be placed
12 on supervised release for 3 years on each of Counts 1 and 40
13 to run concurrently.

14 You must report to the probation office in the
8:39AM 15 federal judicial district where you are authorized to reside
16 within 72 hours of your release from prison, unless the
17 probation officer instructs you to report to a different
18 probation office or within a different time frame. While on
19 supervised release, you shall not commit another federal,
8:40AM 20 state or local crime and shall be prohibited from possessing
21 a firearm or other dangerous device.

22 In addition, you shall not possess a controlled
23 substance, shall comply with the standard conditions that
24 have been adopted by this Court and shall comply with the
8:40AM 25 following additional conditions: Since the instant offense

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8:40AM 1 occurred after September 13, 1994, drug testing is required
2 by the 1994 Crime Control Act.

3 You shall participate in a program for substance
4 abuse including substance abuse testing, such as urinalysis
8:40AM 5 and other testing and shall undergo a drug-alcohol evaluation
6 and treatment, if substance abuse is indicated by the
7 testing.

8 The probation officer will supervise the details of
9 any testing and treatment, including the selection of a
8:41AM 10 treatment provider and schedule. If inpatient treatment is
11 recommended, however, it must be approved by the Court,
12 unless you consent. You're not to leave treatment until
13 complete or as ordered by the Court. While in treatment and
14 after discharge from treatment, you're to abstain from the
8:41AM 15 use of alcohol. You're required to contribute to the cost of
16 services rendered.

17 You shall cooperate in the collection of a DNA
18 sample as required by the Justice For All Act of 2004. You
19 shall submit to a search of your person, property, vehicle,
8:41AM 20 place of residence or any other property under your control
21 based upon reasonable suspicion and permit confiscation of
22 any evidence or contraband discovered.

23 You shall participate in a mental health treatment
24 program including a mental health evaluation and any
8:41AM 25 treatment recommended. I believe that that's appropriate

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8:41AM 1 based on all the information before me, including the
2 information set forth in the presentence investigation
3 report.

4 The probation officer will supervise the details of
8:42AM 5 any testing and treatment and including the selection of a
6 provider and schedule. If inpatient treatment is
7 recommended, however, it must be approved by the Court,
8 unless you consent. You're not to leave such treatment until
9 complete or as ordered by the Court.

8:42AM 10 While in treatment or taking psychotropic
11 medication, you shall abstain from the use of alcohol.
12 You're required to contribute to the cost of services
13 rendered. You're prohibited during your time of supervised
14 release from active membership in any motorcycle club which
8:42AM 15 has been identified by law enforcement as a criminal
16 organization.

17 You shall not pay dues, attend meetings,
18 participate in mandatory runs or wear the clothing, colors,
19 patch or insignia of any such club.

8:42AM 20 Further, you shall not attend social functions
21 sponsored by such clubs, even if the function is open to
22 citizens; in other words, the public.

23 Lastly, you shall not associate with any members of
24 such clubs unless approved by the probation officer for
8:43AM 25 legitimate reasons such as employment or as otherwise

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8:43AM 1 approved by the Court.

2 I find that you do not have the ability to pay a
3 fine and, therefore, any fine in this case is waived. You do
4 have to pay the mandatory \$100 special assessments for each
8:43AM 5 count of conviction. That's \$100 for Count 1 and Count 40
6 for a total of \$200. That's due immediately.

7 While incarcerated, payments shall begin under the
8 Bureau of Prisons Financial Responsibility Program. Payments
9 shall be made to the Clerk, U.S. District Court, Attention:
8:43AM 10 Finance, U.S. Courthouse, 2 Niagara Square, Buffalo,
11 New York, 14202.

12 You shall forfeit your interest in the
13 property specifically set forth in Section VII of the plea
14 agreement and incorporated herein and pursuant to the plea
8:43AM 15 agreement.

16 Mr. Dekay, you've waived the right to appeal
17 the sentence that I just imposed because it's within the
18 range set forth in the plea agreement. But if you did want
19 to attempt to pursue an appeal, you would have to file a
8:44AM 20 notice of appeal within 14 days of when the judgment is
21 entered.

22 And if you could not afford to pay the costs
23 of an appeal, you'd have the right to apply to proceed in
24 forma pauperis.

8:44AM 25 I will recommend to the Bureau of Prisons that

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8:44AM 1 Mr. Dekay participate in the RDAP program or such other
2 substance abuse program as deemed appropriate by the Bureau
3 of Prisons. I will also make a specific recommendation that
4 he receive treatment for his jaw injury, and I don't
8:44AM 5 typically, Mr. Henry, set forth a number of specific
6 facilities.
7 **MR. HENRY:** Okay.
8 **THE COURT:** I'll make a recommendation that
9 Mr. Dekay be housed in a facility as close to Buffalo,
8:44AM 10 New York as possible.
11 **MR. HENRY:** That's fine.
12 **THE COURT:** Was there any other requests or
13 questions, Mr. Henry.
14 (WHEREUPON, a discussion was held off the record.)
8:45AM 15 **MR. HENRY:** No, Judge, you covered everything.
16 **THE COURT:** Okay. Are there counts to dismiss,
17 correct?
18 **MR. TRIPI:** There are, your Honor.
19 Those would be the open counts as to this defendant
8:45AM 20 of the second superseding indictment: Counts 2, 10 through
21 16, 39, 45 and 46.
22 **THE COURT:** All right. Those counts will be
23 dismissed.
24 **MR. TRIPI:** Thank you.
8:45AM 25 **THE COURT:** Officer Murray, anything that I missed

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1 or any questions?

2 **PROBATION OFFICER MURRAY:** No, your Honor.

3 **THE COURT:** Good luck to you, Mr. Dekay.

4 **THE DEFENDANT:** Thank you.

5 **MR. HENRY:** Thank you, Judge.

6 **THE COURT:** Thank you.

7 (**WHEREUPON,** proceedings were adjourned.)

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